



FH

**STATE OF WISCONSIN
Division of Hearings and Appeals**

In the Matter of

[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

DECISION

MPA/156650

PRELIMINARY RECITALS

Pursuant to a petition filed April 02, 2014, under Wis. Stat. § 49.45(5), and Wis. Admin. Code § HA 3.03(1), to review a decision by the Division of Health Care Access and Accountability in regard to Medical Assistance, a hearing was held on May 01, 2014, at Kenosha, Wisconsin.

The issue for determination is whether the Department of Health Services, Division of Health Care Access and Accountability correctly denied the Petitioner's request for speech therapy.

There appeared at that time and place the following persons:

PARTIES IN INTEREST:

Petitioner:

[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

[REDACTED]

Respondent:

Department of Health Services
1 West Wilson Street, Room 651
Madison, Wisconsin 53703

By: OIG by letter

Division of Health Care Access and Accountability
1 West Wilson Street, Room 272
P.O. Box 309
Madison, WI 53707-0309

ADMINISTRATIVE LAW JUDGE:

Mayumi M. Ishii
Division of Hearings and Appeals

FINDINGS OF FACT

1. Petitioner is a resident of Kenosha County.

2. On November 14, 2013, Tender Touch Therapy, LLC submitted a prior authorization request on behalf the Petitioner, seeking 24 sessions of Speech Therapy at cost of \$2,880.00. (Exhibit 5, pg. 5)
3. The goals of the requested therapy are to have Petitioner:
 - a. Utilize visual supports to identify his emotional state from a field of 3-5 ("I feel___.") in 3 of 5 opportunities.
 - b. Utilize visual supports (e.g. scale of 1-5, color codes, etc.) to identify the intensity / degree of his emotions during structured activities in 1 of 3 opportunities given maximal cueing.
 - c. Follow maximal cues to regulate intense/excessive emotions or demonstrate appropriate self-control in 3 of 5 opportunities.
 - d. Utilize visual supports (e.g. comic strips, video/picture modeling, etc.) in order to verbalize emotions and/or problem-solve alternative solutions in various socially/emotionally challenging situations across environments in 3 of 5 opportunities.
 - e. Understand and maintain appropriate social boundaries, including recognizing and advocating for his own need for personal space, in 3 of 5 opportunities given a model and maximal cueing.
 - f. Recognize paraverbal/nonverbal cues (e.g. body language, facial expression, tone of voice, eye contact, etc.) in visually presented situation with 70% accuracy given a model and moderate cueing.

(Exhibit 5, pgs. 28 and 29)

4. On February 18, 2014, the Department of Health Services (DHS) sent the Petitioner a notice indicating that the request for speech therapy had been denied. (Exhibit 5, pgs. 82-84)
5. On February 18, 2014, DHS sent Tender Touch Therapy notice of the same. (Exhibit 5, pgs. 85-86)
6. The Petitioner filed a request for fair hearing that was postmarked / received by the Division of Hearings and Appeals on April 2, 2014. (Exhibit 1)
7. The Petitioner has an individualized education program (IEP) to address "Other Health Impairment / Speech and Language". (Exhibit 5, pg. 17)
8. Petitioner receives, "Specially designed instruction to address communication delays" three times per week, for 20 minutes per session and he receives 150 minutes per day of "Special Instruction in reading, written language." (Exhibit 5, pg. 17)
9. Petitioner has seven language related goals in his IEP:
 1. Increase his mean length of utterance to 6.2 by May 2014
 2. Produce /k/ and /g/ with 90% accuracy.
 3. Produce final /s/ in conversation with 90% accuracy by May 2014
 4. Produce consonant clusters with 85% accuracy by May 2014
 5. Demonstrate grammatical error on fewer than 5% of the words used in his language samples. Structures to be mastered at the level of 85% or better include; present progressive "ing", plural "s", copula "is" and personal pronouns.

6. Increase reading skills by: identifying by sounds (S,N,P,G,K,Q,U, E, Y, s, b, n, c, l, k, y, x) decoding CVC words and CVCV words, reading 40 signed words with 80% accuracy in 3 of 4 attempts.
7. Increase written language skills by writing his first and last name from memory, writing uppercase and lowercase letters, writing the numbers 8, 9, 11-25, writing CVC words and writing simple dictated sentences using a capital letter and period with 85% accuracy in 3 of 4 attempts.

(Exhibit 5, pgs. 20-21)

10. Petitioner also receives services from the Intensive In-Home Treatment Services Program through the Children's Long Term Services Waiver Program. Services are provided by Children's Behavioral Health Services, LLP. The Expressive Language Treatment Goals are to address:

Rate of Speech
Sentence Length
"Wh" questions
Prepositions, Pronouns
Adjective
Voice Tone
Gaining Attention
Sustaining Sounds
Clarity in sounds

(Exhibit 4, pg. 15)

11. Children's Behavioral Health Services also stated Social Skills goals and Behavior goals that include teaching the Petitioner to manage his own behavior and increase his frustration tolerance. (Exhibit 4, pgs. 15-17)

DISCUSSION

Speech and language therapy is a Medicaid covered service, subject to prior authorization after the first 35 treatment days. Wis. Admin. Code, § DHS107.18(2).

The Department of Health Services sometimes requires prior authorization to:

1. Safeguard against unnecessary or inappropriate care and services;
2. Safeguard against excess payments;
3. Assess the quality and timeliness of services;
4. Determine if less expensive alternative care, services or supplies are usable;
5. Promote the most effective and appropriate use of available services and facilities; and
6. Curtail misutilization practices of providers and recipients.

Wis. Admin. Code § DHS107.02(3)(b)

In a request for therapy, the Petitioner has the burden to prove, by a preponderance of the credible evidence that the requested level of therapy meets the approval criteria.

It is the position of the DHCAA that the requested speech therapy is not covered under Wis. Admin. Code §DHS 107.18(1)(a) above, because the goals of therapy are not consistent with the treatments that must be performed by or under the direct supervision of a licensed speech therapist per §DHS 107.18(1)(c).

The goals of the requested therapy are for the Petitioner to:

1. Utilize visual supports to identify his emotional state from a field of 3-5 (“I feel ____.”) in 3 of 5 opportunities.
2. Utilize visual supports (e.g. scale of 1-5, color codes, etc.) to identify the intensity / degree of his emotions during structured activities in 1 of 3 opportunities given maximal cueing.
3. Follow maximal cues to regulate intense/excessive emotions or demonstrate appropriate self-control in 3 of 5 opportunities.
4. Utilize visual supports (e.g. comic strips, video/picture modeling, etc.) in order to verbalize emotions and/or problem-solve alternative solutions in various socially/emotionally challenging situations across environments in 3 of 5 opportunities.
5. Understand and maintain appropriate social boundaries, including recognizing and advocating for his own need for personal space, in 3 of 5 opportunities given a model and maximal cueing.
6. Recognize paraverbal/nonverbal cues (e.g. body language, facial expression, tone of voice, eye contact, etc.) in visually presented situation with 70% accuracy given a model and moderate cueing.

The goals related to the Petitioner identifying his emotions, identifying the intensity of his emotions, regulating his behavior and maintaining appropriate social boundaries do not appear to require treatment to diagnose an issue, screen for a disorder, prevent a speech/language deficit or correct a speech/language impairment. As such, any speech therapy related to those behavior modification goals would not be a covered service under Wis. Admin. Code §DHS 107.18(1)(a).

Even if those services could be covered by Medicaid, the requested services are duplicative of services the Petitioner is already receiving.

“In determining whether to approve or disapprove a request for prior authorization, the department shall consider:

1. The medical necessity of the service;
2. The appropriateness of the service;
3. The cost of the service;
4. The frequency of furnishing the service;
5. The quality and timeliness of the service;
6. The extent to which less expensive alternative services are available;
7. The effective and appropriate use of available services;
8. The misutilization practices of providers and recipients;
9. The limitations imposed by pertinent federal or state statutes, rules, regulations or interpretations, including Medicare, or private insurance guidelines;
10. The need to ensure that there is closer professional scrutiny for care which is of unacceptable quality;
11. The flagrant or continuing disregard of established state and federal policies, standards, fees or procedures; and
12. The professional acceptability of unproven or experimental care, as determined by consultants to the department.”

Wis. Admin. Code §DHS107.02(3)(e)

“Medically necessary” means a medical assistance service under ch. DHS 107 that is:

- (a) Required to prevent, identify or treat a recipient's illness, injury or disability; and
- (b) Meets the following standards:

1. Is consistent with the recipient's symptoms or with prevention, diagnosis or treatment of the recipient's illness, injury or disability;
2. Is provided consistent with standards of acceptable quality of care applicable to the type of service, the type of provider, and the setting in which the service is provided;
3. Is appropriate with regard to generally accepted standards of medical practice;
4. Is not medically contraindicated with regard to the recipient's diagnoses, the recipient's symptoms or other medically necessary services being provided to the recipient;
5. Is of proven medical value or usefulness and, consistent with s. DHS 107.035, is not experimental in nature;
6. **Is not duplicative with respect to other services being provided to the recipient;**
7. Is not solely for the convenience of the recipient, the recipient's family, or a provider;
8. With respect to prior authorization of a service and to other prospective coverage determinations made by the department, is cost-effective compared to an alternative medically necessary service which is reasonably accessible to the recipient; and
9. Is the most appropriate supply or level of service that can safely and effectively be provided to the recipient.

Emphasis added, Wis. Adm. Code. §DHS 101.03(96m)

The Petitioner is currently receiving Intensive In-Home Services through the Children's Long-Term Services Waiver program. That means the Petitioner is required to receive a minimum 20 hours per week of in-home therapy in order to remain in the program. *Medicaid Waivers Manual, Chapter IV, Page IV-105 to 107, paragraph 9* According to the stated treatment goals of Children's Behavioral Health Services, LLP, the Petitioner is receiving services to address his expressive language deficits, his social skills and to modify his behavior, i.e. the Way to A program to curb aggressive behavior and to teach the Petitioner how his behavior impacts others, and the "use of behavioral social stories to accept directions and increase frustration tolerance."

Based upon the foregoing, it is found that the requested services are duplicative of the services being provided by Children's Behavior Health Services, LLP.

The Petitioner's grandmother and guardian submitted a neuropsychological evaluation dated January 30, 2014, to support her claim that the Petitioner needs private speech therapy in addition to the services he receives at school and through Children's Behavior Health Services. (See Exhibit 3) The report diagnosed the Petitioner with "Autism spectrum disorder with learning disability or reading, mathematics and written expression; adjustment disorder with mixed mood and conduct." (Exhibit 3, pg. 7) However, under recommendations there was only a brief discussion of speech therapy: "...demonstrates persistent delays in expressive and receptive language and phonological processing and awareness. Therefore, he will benefit from the continuation of speech and language therapy to further address these concerns." (Exhibit 3, pg. 9). There was no specific recommendation that the Petitioner receive private speech therapy to modify Petitioner's behavior, nor was there a specific recommendation that Petitioner needed private speech therapy, in addition to the three, 20 minute speech therapy sessions he receives at school and the 20 hours of weekly therapy he receives at home through Children's Behavior Health Services, LLP.

I would note that Petitioner's grandmother expressed that her concern is that Petitioner's speech is intelligible and that this causes the Petitioner a great deal of frustration. The goals stated by Tender Touch are unrelated to ameliorating unintelligible speech.

CONCLUSIONS OF LAW

DHS correctly denied the Petitioner's request for speech therapy.

THEREFORE, it is

ORDERED

That the Petition is dismissed.

REQUEST FOR A REHEARING

This is a final administrative decision. If you think this decision is based on a serious mistake in the facts or the law, you may request a rehearing. You may also ask for a rehearing if you have found new evidence which would change the decision. Your request must explain what mistake the Administrative Law Judge made and why it is important or you must describe your new evidence and tell why you did not have it at your first hearing. If you do not explain these things, your request will have to be denied.

To ask for a rehearing, send a written request to the Division of Hearings and Appeals, P.O. Box 7875, Madison, WI 53707-7875. Send a copy of your request to the other people named in this decision as "PARTIES IN INTEREST." Your request for a rehearing must be received no later than 20 days after the date of the decision. Late requests cannot be granted.

The process for asking for a rehearing is in Wis. Stat. § 227.49. A copy of the statutes can be found at your local library or courthouse.

APPEAL TO COURT

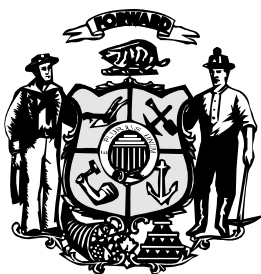
You may also appeal this decision to Circuit Court in the county where you live. Appeals must be served and filed with the appropriate court no more than 30 days after the date of this hearing decision (or 30 days after a denial of rehearing, if you ask for one).

For purposes of appeal to circuit court, the Respondent in this matter is the Department of Health Services. After filing the appeal with the appropriate court, it must be served on the Secretary of that Department, either personally or by certified mail. The address of the Department is: 1 West Wilson Street, Room 651, Madison, Wisconsin 53703. A copy should also be sent to the Division of Hearings and Appeals, 5005 University Avenue, Suite 201, Madison, WI 53705-5400.

The appeal must also be served on the other "PARTIES IN INTEREST" named in this decision. The process for appeals to the Circuit Court is in Wis. Stat. §§ 227.52 and 227.53.

Given under my hand at the City of Milwaukee,
Wisconsin, this 11th day of June, 2014.

\sMayumi M. Ishii
Administrative Law Judge
Division of Hearings and Appeals



State of Wisconsin\DIVISION OF HEARINGS AND APPEALS

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The preceding decision was sent to the following parties on June 11, 2014.

Division of Health Care Access and Accountability